

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 279 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PS CHAUHAN

Versus

CHAIRMAN, GUJ. ELECTRICITY BOARD & ANR.

Appearance:

MR PC MASTER for Petitioner

MR KAUSHAL THAKER for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/12/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, a Superintending Engineer of the Gujarat Electricity Board, filed this writ petition before this court and prayed therein for the direction to the respondents to promote him to the grade of Superintending Engineer with effect from 1st August, 1972.

2. The petitioner has been given the promotion in

the grade of Superintending Engineer from 1st January, 1979 under the order dated 18th December, 1979. It is not in dispute that under the order annexure 'C' dated 27th October, 1976, Sr. Engineers also upto the level of Superintending Engineer (inclusive) were entitled for the benefit of nine years rule with effect from 1-8-1972. The petitioner against the order dated 18th December, 1979 made a representation and claimed for the benefit of nine years from 1st August, 1972, but his representation was dismissed under the order dated 19th August, 1983. No reason whatsoever has been given why the petitioner has been given the benefit of nine years rule with effect from 1-1-1979 when he was eligible from 1-8-1972. It is true that the benefit of nine years rule is not automatic, and the service of the officer concerned should not be adverse. The person should be otherwise fit for promotion on the basis of overall performance as per normal rules of the Board.

3. Now the adversities which are there in service record of the petitioner are to be briefly referred. Under the communication dated 2nd June, 1979, the petitioner was communicated with the adverse remark for the year 1971-71 to 1974-75 and 1977-78. Another adversity in the service record of the petitioner is a minor penalty which has been given to him with regard to an accident to TG Unit at Kandla on 28th January, 1973. The authority has not considered whether the adverse remarks which have been communicated to the petitioner for the years 1971-72 to 1974-75 and 1977-78 should have been considered due to the late communication thereof and secondly where any minor penalty given to him for the alleged incident of the date after 1-8-1972 could have been taken into consideration to deny him the benefit of nine years rule from 1st August, 1972. It is also not understandable how the date has been chosen 1-1-1979. This has not been done and by passing non speaking order the claim of the petitioner for benefit of nine years rule from 1-8-1972 has been rejected. Apart from this, the matter could have been considered whether merely on these uncommunicated adverse remarks as well as the minor penalty, the petitioner could have been deprived of the benefit of nine years rule. On 1-8-1972, the petitioner was not communicated with the adverse remarks.

4. Taking into consideration these facts, I am of the opinion that the case of the petitioner was not fairly and impartially considered for grant of nine years benefit from 1-8-1972. The decision on the representation of the petitioner given by the respondent under the letter dated 9th August, 1983 is arbitrary as

no reason whatsoever has been given not to accept the claim of the petitioner.

5. In the result, this Special Civil Application succeeds and the same is allowed. The communication of the rejection of the representation of the petitioner annexure 'K' dated 19th August, 1983 is quashed and set aside. The respondent no.1 is directed to consider the representation of the petitioner afresh, in accordance with law regarding giving of the benefit of the nine years rule to him from 1-8-1972 within a period of three months from the date of receipt of certified copy of this order. While considering the representation of the petitioner, the respondent no.1 shall take into consideration the fact that the minor punishment of the reversion was given for the incident of the date after 1-8-1972 and the adverse remarks were communicated late. In case the petitioner is found eligible for nine years benefit from 1-8-1972 or any other date in between 1-8-1972 and 1-1-1979 then the petitioner shall be entitled for the interest on the arrears of fixation at the rate of 12% from the date of filing of this Special Civil Application i.e. 13th January, 1984. In case the claim of the petitioner of nine years rule benefit from 1-8-1972 or any date thereafter is not acceptable then the respondent no.1 shall pass a speaking order and the copy of the same may be sent to the petitioner by registered post A.D.. Rule is made absolute in the aforesaid terms. The respondent no.1 is further directed to pay to the petitioner Rs.1000/- by way of costs of this Special Civil Application.

zgs/-